MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018 / 2019 SESSION

UIL2722 – ISLAMIC LAW II

(All Sections / Groups)

08th MARCH 2019

Reading Time: 09:00 a.m. – 09:15 a.m.
(15 Minutes)

Answering Time: 09:15 a.m. – 12:15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.

2. This question paper consists of 6 pages with 5 questions only.

3. Attempt **ONE** question in **PART A** and **ALL** questions in **PART B** which are **COMPULSORY**. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall **CLEAN** and **ORIGINAL** copies of Al Qur'an Translation. Students are not allowed to lend or borrow Al Qur'an Translation during the Examination.

5. Write all your answers in the Answer Booklet provided.

PART A - CHOOSE ONE (1) QUESTION ONLY

QUESTION 1

Ali and Ahmad are professionals mountain climbers. Both of them have jointly opened a business in mountain climbing training and tools centre. They often organize camps to train the young climbers other than selling the climbing tools.

One day, Ali and Ahmad led an expedition group of climbers at Mount Fuji in Japan. While climbing and reaching the peak of Mount Fuji valley, the group was hit by inclement weather that caused them to become trapped. The climb turned out to be worsen when a storm closed in and the winds began to wreak havoc, causing an avalanche (a sudden arrival or occurrence of ice or snow in overwhelming quantities). Ahmad fell through a patch of thin ice and trapped in a crevasse (a deep open crack) with another climber (Abu). Abu suffered a severe deep cut and broken leg. Ahmad forced Ali to cut him and Abu loose in order to find help and save the rest of the climbers at a safer ground. Ali cut the rope and left with the other climbers to seek help for rescue.

Ahmad and Abu had little food and no source of heat in the harsh conditions at over 10,000 feet altitude. They had a small amount of food and bottles of water. During the days following the incident, they divided up the food in very small amounts to make their meager supply last as long as possible. Due to poor condition of Abu's leg and bad weather, he died 10 days later.

After a month, no rescue team was at any sight and with no more food and water, Ahmad had no choice but to survive himself by consuming Abu's flesh. He was found and saved by the rescue team after three months.

In February 2018, Ali and Ahmad were sued by the Abu's family members for instigating him to join the camp for the fact that Abu did not have any experience nor proof for the training at their centre and no licence to run their mountain climbing business.

Ahmad and Ali were also being charged for murdering Abu in the Syariah Court.

Based on the above situation,

i) Discuss whether there is any possible criminal liability for Ahmad and Ali;

(15 marks)

Continued...

ii) Discuss the above situation from the Islamic legal maxim (s) point of view.

(10 marks)

(Total: 25 marks)

OR

QUESTION 2

Hafiz Khan (hereinafter referred as "Hafiz"), has handwritten his will and it includes the following provisions:

"My Will made this 24th August 2018 by Hafiz Khan:

(i) I wish Tahir Bahari to pay all my debts,
(ii) I give RM5,000 to Tahir Bahari in recognition of his kindness and continuing assistance,
(iii) I give RM10,000 to each of the charities referred to in any list placed in an envelope with this will,
(iv) I give the remainder of my estate to my son, Helmi

Witnessed and signed by: Tahir Bahari
Amir Husin"

Hafiz did not sign his name at the foot of the will. He died in December 2018 and Tahir Bahari Khan (hereinafter referred as "Tahir"), has consulted you for advice. Tahir informed you that he and Hafiz were brothers. He also informed you that they were sitting next to each other at a dinner in last Aidil Fitri dinner when Hafiz produced a document which he asked him to sign. After he had done so, Hafiz put it back in his pocket.

Tahir mentioned that as the dinner was ending, Hafiz said he needed another witness to the document and immediately went to the far end of the table where Amir Husin (hereinafter referred as "Amir"), was sitting. Although he could not hear what was said, he told you that he saw Hafiz took the document out of his pocket and Amir then signed the document.

Continued...

Tahir also informed you that during October 2018 he visited Hafiz at Halim's house where Halim looked after him; and he produced a sealed envelope marked "Will" for Tahir. Hafiz stayed at Halim's house until his passing in early November 2018.

After Hafiz's death, Tahir opened the envelope and found it contained Hafiz's will, this being the document he and Amir had signed at the dinner, and an undated list written in Hafiz's handwriting containing the names and addresses of six charities.

After a post mortem, it was revealed that Hafiz's death was due to large content of arsenic substance in his body. Halim was arrested by police as a prime suspect.

Note: Halim is Hafiz's biological son and Helmi is an adopted son who is studying abroad. Hafiz has given his 2017 Limited Edition Aston Martin Vanquish car and his travel agency business to Halim in April 2018.

As a Syarie lawyer:

i) Determine the validity of Will and Hibah made by Hafiz;

(9 marks)

ii) Discuss all possible claims to be settled and division of Hafiz's estates according to Islamic Faraidh law;

(8 marks)

iii) Discuss the possible criminal liability of Halim and its consequences in regards to his Faraidh share in your answer.

(8 marks)

(Total: 25 marks)

Continued...

PART B – ANSWER ALL QUESTIONS

QUESTION 3

Amin was a former employee of Nadia, the owner of "Naddy's Hair Salon" a highly successful chain of hairdressing salons. Amin's employment was terminated by Nadia after a customer complained of his body odour. However, Amin believes he has been unfairly treated by Nadia, and was angry that she sacked him, particularly as Nadia refused to pay RM2,000.00 worth of sick leave benefits unused by Amin.

Upset that he has been treated badly by Nadia, Amin approached Azizi for assistance. Azizi has recently been released from prison. He has a long criminal history of assaults and robberies. Amin had met Azizi on a number of occasions at the local coffee house, and was told by a friend that Azizi had previously spent time in prison, although Amin believed it had been for housebreaking.

Azizi agreed with Amin's plan to break into Nadia's house during a day when Nadia is at work, and the plan is that Azizi and Amin would pretend to be plumbers if asked why they were attending the house. The plan was for Amin to take RM2,000.00 worth of property, and for Azizi to take whatever valuable items he wished.

Amin and Azizi arrived at Nadia's house, and noticed the front door unlocked. Walking through the open door, Amin saw a Sony X70E LED 4K Ultra HD television which he believed must be worth 'at least RM2,000.00'. Amin took the television. Azizi went upstairs to the bedroom, and took a box of jewellery. However, when looking for further valuable items, Azizi was disturbed by Mariam, Nadia's maid. Mariam screamed in fright, and Azizi responded by hitting Mariam over the head. Mariam collapsed unconscious. Hearing the screams, Amin rushed upstairs to the bedroom. Azizi shouted at Amin:

"I don't know if she's dead or not, but I'm not taking a chance on going back to jail. Get her out of here, and make sure she can't be found. If you don't take care of her, remember that I know where you live, and that you have a daughter. I will hunt her down, and you will regret the day you met me. Don't even think about disobeying me, or going to the cops".

Continued...

Amin carried Mariam out of the house and drove her off to his house and hid her in attic of his house. Mariam became conscious after few hours and managed to escape. She made a police report and Amin was arrested.

Discuss any criminal liabilities and defence(s) of all the parties in the above situation.

(Total: 25 marks)

QUESTION 4

A person is presumed innocent until proven guilty. But once the case has been proven in certain, it can no longer be removed. Any presumption made earlier will not be valid anymore. When it becomes necessary for a person to choose or prevent between two evils, the most important principle is that he must try his best to eliminate as much harm as possible. In contract, when the terms and conditions are silent on a particular thing, regard had to be made to customs which are prevalent among the society.

The above statement refers to the application of some Islamic legal maxims. Discuss and illustrate those maxims. Apply the maxims to Islamic criminal law and succession law, where possible.

(Total: 25 marks)

QUESTION 5

Last year, Mahmud passed away at the age of 46 years old. He owned a prosperous business which is managed together with his wife, Adlina. Apart from his wife, he left behind a son, a mother and two brothers. After few months, a lawyer came to see Adlina and told her that his husband left a will duly signed by him only few weeks before his death.

In his will, Mahmud mentioned the following details:-

1. Half of his estate shall be given to his adopted child, Aminah upon she reaches the age of 18.
2. As he is feeling grateful to his eldest brother, Ahmad, in terms of support and advice in business related matters, he also stated that he shall give him one quarter of his estate to him upon his death;
3. The rest of the estate shall be subjected to succession *(faraid)* according to Islamic law of succession.

Continued...

In the meantime, his younger brother Zali also claimed that he is also entitled to one quarter of Mahmud's estate as the payment of debt. He claimed that Mahmud had borrowed his money to be used for the company's capital and it is yet to be paid. Zali told Adlina that he and Ahmad shall be listed among legal heirs of Mahmud.

On another occasion, Adlina was also told by the lawyer that, Mahmud had in 2015, transferred his ownership of a double storey shop house to a religious school for the sake of charity. All the transfer documentation has been tendered to her as a proof. She did not know anything about the gift and was doubtful about its validity.

Adlina who was still sad on the demise of her husband came to see you and sought for an advice. Advise her on the following matters:-

i) The validity of a will created by Mahmud before his death;

(6 marks)

ii) The distribution of Mahmud's estates according to Islamic law of succession;

(11 marks)

iii) The validity of hibah by Mahmud in 2015.

(8 marks)

(Total: 25 marks)

End of Page